

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Oakland, CA)

Q & S AUTOMOTIVE, LLC
Employer

and

Case 32-RC-5403

MACHINISTS LOCAL LODGE NO. 1546,
DISTRICT LODGE NO. 190
Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Q&S Automotive, LLC d/b/a Porsche of Oakland, Audi of Oakland, and Mazda of Oakland, operates car dealerships in Oakland, California. The Petitioner, Machinists and Mechanics Lodge No. 1546, District Lodge No. 190, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time service technicians and apprentices employed at the Employer's combined Porsche/Audi facility located at 2345 Broadway in Oakland, excluding all other employees. The Employer currently employs 13 full-time service technicians at the Porsche/Audi facility, including 11 certified technicians and 2 trainees. The Employer employs no part-time service technicians at this time. Thus, the unit sought by the Petitioner currently includes 13 employees.

A hearing officer of the Board held a hearing in this matter. Both parties presented evidence and a closing argument at the hearing, and the Employer filed a brief with me.¹ As

¹ The Petitioner opted to present its argument at the hearing in lieu of filing a brief.

evidenced at the hearing and in the Employer's brief, the parties disagree on whether the proposed unit is an appropriate unit. The Petitioner asserts that its proposed unit is an appropriate unit because the service technicians are highly-skilled automotive mechanics whose technical skills, training, experience, tools, and career paths are all significantly different from those of the other employees. Based on these factors, which are commonly used to identify a craft unit, the Petitioner asserts that the service technicians share a sufficiently distinct community of interest to constitute an appropriate bargaining unit. The Petitioner further contends that the Employer's Porsche/Audi facility is a separate facility, distinct from the Employer's Mazda facility, and therefore, a unit of service technicians at just the Porsche/Audi facility is appropriate.

The Employer asserts that the only appropriate unit based on community of interest standards is a unit of all Service and Parts Department employees at both the Porsche/Audi and Mazda facilities, including all service technicians, service advisors, parts technicians, detailers, and utility/lot persons.² The Employer employs 13 service technicians at the Porsche/Audi facility and 4 at the Mazda facility, for a total of 17 service technicians. The Employer employs

² The Employer also contends that its proposed unit is the historical bargaining unit at these locations and is therefore the only appropriate unit. To support its claim, the Employer initially introduced two former collective bargaining agreements, which were received into evidence as Employer's Exhibits 1 and 2. The Employer described the exhibits as predecessor agreements that involved the Petitioner. However, the Employer did not describe the bargaining units, the work sites, or the predecessor employers involved. Although the exhibits were received into evidence, the Employer subsequently withdrew them. Thus, the former collective bargaining agreements are not a part of the record. The record does not establish whether they were successive contracts involving one bargaining unit, or completely separate contracts involving two bargaining units. The record does not establish whether the contracts were with one predecessor employer or two, whether they involved one facility or two, or whether they covered one bargaining unit or two separate bargaining units.

The Employer purchased the Porsche/Audi of Oakland and Mazda of Oakland dealerships from their prior owners in May 2004 and began bargaining with the East Bay Automotive Council (EBAC) as a successor employer. EBAC consisted of the Petitioner, along with the Painters Union Local 1176 and the Teamsters Union Local 78. The record contains four contract proposals that were exchanged between the Employer and EBAC, and the evidence indicates that EBAC was bargaining on behalf of the unit now proposed by the Employer, i.e. the service technicians, service advisors, parts technicians, and utility/lot persons at both the Porsche/Audi and Mazda facilities. However, no collective bargaining agreement was ever reached, either between the Employer and EBAC, or between the Employer and the Petitioner separately. Thus, although there was some bargaining between the parties regarding the unit now proposed by the Employer, I find the short, unproductive bargaining history insufficient to establish that the Employer's proposed unit is an historical bargaining unit.

3 service advisors at the Porsche/Audi facility and 1 at the Mazda facility, for a total of 4 service advisors. The Employer employs 2 parts technicians at the Porsche/Audi facility and 1 at the Mazda facility, for a total of 3 parts technicians. The Employer employs 4 detailers and 4 utility/lot persons who work at both the Porsche/Audi and the Mazda facilities. Thus, the unit claimed appropriate by the Employer includes about 32 employees. Alternatively, the Employer contends that the only appropriate unit based on community of interest, at a minimum, must include the service technicians, service advisors and parts technicians at both the Porsche/Audi and Mazda facilities, a unit that would include about 24 employees.³

I have considered the evidence and the arguments presented by the parties. As discussed in greater detail below, I have concluded that the Employer's service technicians constitute an appropriate unit for collective bargaining purposes, based on both craft unit and community of interest principles. I have also concluded that the unit must include the Mazda service technicians, based on the geographic proximity and centralized administrative control of the two facilities, as well as the similar work and skills of the service technicians at both facilities.

THE EMPLOYER'S OPERATION

The Employer is engaged in the business of selling and servicing automobiles at two, adjacent locations in Oakland, California. The Employer operates Porsche and Audi dealerships at a single facility located at 2345 Broadway in Oakland. It operates a Mazda dealership at another facility located at 2315 Broadway in Oakland. The Porsche/Audi and Mazda facilities are located about 100 yards apart on adjoining city lots and are separated by a parking lot. The Employer has operated both facilities since May 2004.

³ The Employer's alternate unit would eliminate the 4 detailers and the 4 utility/lot persons, for a total of about 24 employees.

Mike Walsh, the General Manager, is responsible for all aspects of the Employer's business at both facilities, including sales and service at both facilities. Mike Leddy, the Service and Parts Director, reports to Walsh and is responsible for the service and parts departments at both facilities, including all service and parts personnel at both locations. Leddy works on-site at the Porsche/Audi facility, and he directly supervises the 13 service technicians and 3 service advisors at that location. He is directly responsible for hiring, firing, setting wages, making the work schedules, and approving vacations for the service technicians and service advisors at the Porsche/Audi facility. Beneath Leddy at the Porsche/Audi facility, there is a Parts Manager, Don Gouvaia, who directly supervises the 2 parts technicians at that location. Leddy spends 85% of his time at the Porsche/Audi facility and 15% of his time at the Mazda facility. Although he sets the wages for all service and parts employees at both locations, he does not directly supervise employees at the Mazda facility on a daily basis.

Beneath Leddy at the Mazda facility, there is a separate Service Manager, Rick Paragua, who directly supervises the service and parts employees at that location.⁴ Paragua is directly responsible for hiring, firing, making the work schedules, authorizing timecards, and approving vacation requests for the service and parts employees at the Mazda facility. On at least one occasion, a parts employee at the Mazda facility received a pay raise because Paragua recommended it.⁵ Paragua also directly supervises the 4 detailers and 4 utility/lot persons who work at both facilities.

There is no common work space or break space shared by the facilities. Each facility has its own service counter, parts crypt and service stalls. There is no common area where equipment or parts are shared or stored. The only shared equipment between the two facilities is

⁴ There is no equivalent Service Manager position at the Porsche/Audi facility, as the service employees at that facility are supervised directly by Leddy.

⁵ The parties stipulated at the hearing that Leddy, Gouvaia and Paragua are statutory supervisors.

a smog test machine for conducting emissions tests, which is permanently located at the Mazda facility. However, the smog machine is not used interchangeably by technicians of either facility. Rather, the Employer has assigned all smog check work to the Mazda technicians, since the machine is located at that facility. When the Employer receives an order for a smog check, the service is performed by a Mazda technician, regardless of the make of vehicle.

The service technicians at both facilities are responsible for performing automotive service and repairs, including routine maintenance, as well as diagnosing problems and performing the necessary repairs. They take vehicles on test drives and use electronic diagnostic machines to determine problems with the vehicles. They are the only employees who are qualified to use the diagnostic machines. The service technicians work independently in separate work stalls using their own specialized tools to perform whatever service or repair-work is required.

The service advisors are responsible for greeting the customers when they arrive and discussing the desired maintenance or repair. As described by Service and Parts Director Leddy, the service advisors' primary job duty is customer service. After talking to the customer about the desired maintenance or repair, the service advisor writes the customer's repair order and assigns it to a service technician. If additional problems are discovered while the car is in the shop, the service advisor contacts the customer to discuss the problem and obtain authorization for the additional work. The advisor is also responsible for notifying the customer when the work is complete.

The parts technicians use microfiche to look up parts information. They verify parts numbers and check availability, first from stock and then from the manufacturer. The parts department at each facility provides "back counter" service to the service technicians, as well as

retail sales to the public. When parts are ordered, either from the back shop or from a customer, the parts technician completes a parts requisition form and pulls the parts from stock or orders them from the manufacturer. The detailers perform all auto detailing for the Employer at both facilities. The utility persons/lot persons wash the cars at both facilities and move them as needed, such as to drive a car to the customer pick-up area when the service is complete.

ANALYSIS

THE SERVICE TECHNICIANS PRACTICE A DISTINCT CRAFT AND SHARE A COMMUNITY OF INTEREST SEPARATE FROM THE OTHER EMPLOYEES.

The Board has long held that a unit of service technicians only, excluding all other automotive service department employees, is an appropriate unit if the service technicians form a craft unit. Dodge City of Wauwatosa, 282 NLRB 459 (1986). A craft unit consists of a distinct and homogeneous group of skilled journeymen who are working as such, along with their helpers and apprentices. Fletcher Jones Las Vegas d/b/a Fletcher Jones Chevrolet, 300 NLRB 875 (1990). Thus, the Board finds that “mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive or motor service department, and therefore may, if requested, be represented in a separate unit, excluding all other service department employees.” Dodge City of Wauwatosa, 282 NLRB 459, 460 fn. 6. (1986). *See also* Trevellyan Oldsmobile Co., 133 NLRB 1272 (1961). As shown below, the evidence demonstrates that the Employer’s service technicians meet the Board’s test for finding a craft unit.

In determining whether a petitioned-for unit is an appropriate craft unit, “the Board examines: (1) whether the work performed by the employees requires a significant degree of skill that must be developed through extensive experience and/or training or by participation in an apprenticeship program; (2) whether the employees take part in a formal training or

apprenticeship program; (3) whether the work is functionally integrated with the work of the excluded employees; (4) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; (5) whether the employer assigns work according to need rather than on craft or jurisdictional lines; (6) and whether the petitioned-for employees share common interests with other employees.” MGM Mirage d/b/a The Mirage Casino-Hotel, 338 NLRB No. 64 (November 20, 2002).

Technical Skill

The service technicians at both facilities are skilled automotive mechanics. Service and Parts Director Leddy testified that it takes 3-10 years to become a skilled mechanic. The record shows that they perform the type of automotive service and repairs traditionally performed by dealership service technicians. They take vehicles for test drives and rely on their own experience and skills to identify the problems that are causing the vehicles to malfunction. They also use specialized electronic diagnostic equipment to determine the cause of electronic faults. Then, based on their own diagnosis of the problem, they use their own specialized tools to repair the vehicles.

The service technicians are required to supply their own tools. Service and Parts Director Leddy testified that the service technicians’ toolboxes range from the size of a desk to the size of a room. According to Leddy, the minimum amount of tools needed for the service technician job costs between \$2,000 and \$4,000, although some of the service technicians’ personal tool sets are worth \$30,000 to \$40,000. The service technicians are the only employees who are required to supply their own tools.

The evidence shows that the service technicians routinely perform specialized mechanical work that requires specialized skills and the use of specialized tools and equipment. Therefore,

the level of skill required to perform service technician work supports the conclusion that they constitute a craft unit.

Formal Training

The service technicians are required to complete formal technical training specific to the manufacturers' vehicle models, including factory-based training at the manufacturers' facilities each year. They earn various levels of certification from the manufacturers after completing the workshop experience and the number of classes required for each certificate. All of the Employer's service technicians have earned at least the basic certification from the auto manufacturer, except for the 2 trainees at the Porsche/Audi facility.

Neither party contends that the trainees should be excluded from a unit of skilled automotive mechanics. Leddy testified that they are being trained to be journeymen mechanics, and both trainees work full-time performing automotive repairs alongside the journeymen mechanics. One of the trainees is being trained as an Audi service technician, while the other is being trained to do service work on both Audi and Porsche vehicles. Although they are not yet certified, Leddy testified that they are both working toward certification.

The training and certification is manufacturer specific. Thus, a mechanic with only Porsche training works only on Porsches, a mechanic with only Audi training works only on Audis, and a mechanic with only Mazda training works only on Mazdas. Each manufacturer requires different amounts of training. For example, Porsche offers 5 levels of certification, including apprentice, certificate, master, expert, and guild. The training involves a substantial amount of classes and shop experience at each level. Leddy testified that a mechanic must complete 7-8 classes before moving from the apprentice to the certificate level, and then about 12 more classes are required before moving to the master level. The only evidence of any

employee who is cross-trained by more than one manufacturer is Leddy's testimony that one of the current trainees is being trained to work on both Porsches and Audis.

In addition to technical training on the vehicles, the service technicians are also trained to use specialized electronic diagnostic equipment. Each manufacturer has its own diagnostic equipment, and only the service technicians who are trained to work on that manufacturer's cars are qualified to use that manufacturer's diagnostic equipment.

The service advisors and parts technicians also receive training from the manufacturers, but their training programs are different from the service technicians' training. The manufacturers have separate certification programs for the service technicians, service advisors and parts technicians.⁶ Leddy testified that the service advisors receive enough training to give them a basic knowledge of how cars work, but they are not trained or qualified to service or repair a car. They receive no practical, technical training on how to perform vehicle maintenance or repairs. The service advisors receive training related to customer service, new car models, the manufacturer's warranty programs, and the manufacturer's company culture. Like the service advisors, the parts technicians also receive no practical, technical training on how to perform vehicle maintenance or repairs. The parts technicians' training program includes training about how to look up parts information and about the manufacturer's company culture. There is no evidence that the detailers and utility/lot persons receive any training at all.

The record clearly establishes that the service technician job requires formal, technical training that is not required for other employees. The service technicians' level of training thus supports a finding that they are craft employees.

⁶ Leddy testified that the service technicians may have 1-2 classes combined with the service advisors and parts technicians, but there is no evidence as to what those classes might be. The evidence regarding the types of training required for each job classification indicates that the only training employees have in common is the training related to the manufacturer's company culture.

Functional Integration of Work

There is some functional integration between the service technicians' work and the work of other employees. The record reflects that the service advisors, whose jobs are sales/customer service oriented, also serve as a conduit between the customer and the technician. When the customer first arrives at the shop, the service advisor greets the customer and works with the customer to determine what services the customer wants performed. The service advisor then makes a repair order reflecting the desired services. Next, the service advisor assigns the work to a service technician based on the technician's qualifications regarding the car model or type of repair involved.⁷ The service advisor gives the repair order to the technician either by handing it to him personally or by leaving it in a stack where he can retrieve it. The evidence shows that the service technicians commonly discuss the repair orders with the advisors, but the amount of discussion depends on how complicated the order is. Leddy testified that services such as oil changes and basic, scheduled maintenance are straightforward and require no discussion. When a repair order describes more-complicated problems, more discussion is required.

After receiving the repair order, the service technician often takes the vehicles on a test drive to diagnose the problem. The service advisors may also take the vehicles on test drives, initially with the customer, and then sometimes also with the service technician. One of the Audi service advisors, Jennifer Smith, testified that she goes on a test drive with a service technician about once every one or two days. Smith explained that the advisors and technicians go on test drives together in order to verify the problems described by the customer.

Following the test drive, the service technician drives the vehicle to his work stall and performs the necessary maintenance or repair. The service technician also plugs the vehicle into the electronic diagnostic machine to determine any electronic faults. If the vehicle needs more

⁷ Neither party contends that the service advisors are statutory supervisors.

work than was originally anticipated, the service technician informs the advisor so the advisor can get the customer's authorization for the additional work. When the work is complete, the service technician makes handwritten notes on the back of the repair order describing what work was done and returns the repair order to the service advisor.

The evidence shows that when a technician returns a completed repair order to the advisor, they discuss the work that was performed. The amount of discussion depends on the amount of work that was done. Leddy testified that sometimes the technicians discuss the work in detail with the advisors because they have some customers who are passionate about their cars and who want a detailed description of a repair. In those cases, the technician has to describe the work in detail to the advisor so the advisor can inform the customer. However, Leddy stated that most repair orders do not require much discussion. Although Leddy estimated that the technicians talk to the advisors when returning 9 out of 10 repair orders, he also testified that most of the orders are straightforward, and the technicians usually just hand them to the advisors and simply state what work they did. After receiving the completed repair order, the service advisor uses the technician's handwritten notes to create an invoice and notifies the customer that the work is done.

The service technicians have less interaction with the parts technicians than with the service advisors. Normally, the parts needed for the maintenance or repair are listed by the service advisor on the original repair order. The advisor gives a copy of the repair order to a parts technician or leaves it at the parts counter. The parts technician then pre-pulls the parts that the service technician will need and leaves them on the parts counter, marked by repair order number, for the service technician to pick up when he needs them. If the parts are not listed on the repair order, or if the service technician needs additional parts that were not part of the

original order, the service technician completes a parts requisition form and leaves it on the parts counter for the parts technician to fill.

With regard to the detailers and utility/lot persons, there is no evidence showing that these employees have any interactions with the technicians.

Other than the above-described communications regarding the assignment and completion of repair orders, there is no functional integration of work between the service technicians and service advisors. Indeed, the record shows that the service advisors do not assist the technicians as they diagnose the cause of vehicle malfunctions or as they perform the actual repairs on the vehicles. Similarly, although the parts department employees supply the technicians with the parts and have some limited communications regarding what parts are needed, the parts department employees do not assist the technicians as they diagnose the cause of malfunctions or perform the actual repairs on the vehicles

The types of daily contact that service advisors and parts technicians have with service technicians regarding repair orders and requisition forms does not diminish the appropriateness of a separate service technician craft unit, because the parts technicians and service advisors do not perform or assist in the performance of mechanical repairs. *See Fletcher Jones Las Vegas d/b/a Fletcher Jones Chevrolet*, 300 NLRB 875, 875 (1990).⁸ Thus, the evidence regarding the functional integration of work supports a finding that the service technicians are a distinct and homogeneous group of skilled journeymen mechanics who are working as such and who form an appropriate bargaining unit without the inclusion of the service advisors, parts technicians, detailers, and utility/lot persons. *Id.*

⁸ In *Fletcher Jones*, the petitioner sought a service technician unit, while the employer contended that the only appropriate unit must include all service department employees. The Board held that a separate service technician unit was appropriate and did not include the service advisors, despite their daily interaction with the service technicians regarding repair orders and additional work.

Overlap of Duties

Other than the test drives sometimes conducted with both a service technician and a service advisor, no significant work is shared or exchanged between the service technicians and the service advisors, parts technicians, detailers, or utility/lot persons. Although Service and Parts Director Leddy testified that service advisors and parts technicians sometimes do repair work, the evidence does not demonstrate that their work overlaps the work of the service technicians in any significant way. Leddy testified that service advisors have occasionally changed light bulbs and windshield wiper blades, and on one occasion, a parts technician replaced a portion of a grill. Some “overlap in lesser-skilled duties does not destroy the appropriateness” of a separate craft unit. MGM Mirage d/b/a The Mirage Casino-Hotel, 338 NLRB No. 64 (November 20, 2002). *See also* Schaus Roofing & Mechanical Contractors, Inc., 323 NLRB 781 (1997) (“the overlapping of duties in the lesser-skilled aspects of a trade does not preclude a craft unit”). I find that the minimal repair work performed by the service advisors who replace a light bulb or windshield wiper blade, or by the parts technician who installed a portion of a grill, is lesser-skilled service work that is incidental to the service advisors’ main duty of providing customer service and the parts technicians’ main duty of providing parts to customers and to the service technicians. Thus, the evidence shows that the very limited overlap of duties does not undermine the appropriateness of the service technician unit here.

Assignment of Work

The Employer clearly assigns work based on job classifications. There is no evidence that service technician work is ever assigned to any other employees or that the work of the other employees is ever assigned to the service technicians. The auto manufacturers require separate training and certification for the service technicians, service advisors and parts technicians.

Moreover, none of the service advisors have training or experience as a service technician. The different skills and training required for each job demonstrate that the employees are not interchangeable.

Community of Interest

In applying a community of interest test, the Board weighs the following community of interest factors:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions . . .; the infrequency or lack of contact with other employees; lack of integration with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining.

Overnite Transportation Company, 322 NLRB 723, 724 (1996), citing Kalamazoo Paper Box Corporation, 136 NLRB 134, 137 (1962). No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. Airco, Inc., 273 NLRB 348 (1984).⁹

Not surprisingly, the service technicians share some community of interest with the other service department employees. The work of the entire service department relates to vehicle maintenance and repair, and there is some functional integration of the work within the service department. As described above, the service technicians and service advisors interact with parts technicians in order to secure the necessary parts for the service technicians, and the service technicians regularly receive the work orders from, and discuss the orders with, the service advisors.

⁹ See also: *TDK Ferrites Corp.*, 342 NLRB No. 81 (September 14, 2004), citing *Yeungling Brewing Co. of Tampa*, 333 NLRB 892 (2001), and *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F.3d 328 (7th Cir. 1995).

Moreover, many of the service department employees work in close physical proximity to each other, even though each classification has its own separate work area. At the Porsche/Audi facility, the service advisors are located in the front of the service department. The closest service technician stall is located about 10 feet away from the service advisors' counter, the next stall is about 25 feet away from the service counter, and so on until the last stall is located 150-200 feet away from the service counter. The Porsche/Audi service employees also share a break room at the Porsche/Audi facility. At the Mazda facility, the service advisor's desk is located in the front of the service department, where customers are received. The parts technicians work at a parts counter about 15-20 yards behind the service advisor and are separated from the service advisor by a wall. The service technicians' work stalls are located about 15 yards away from the parts department. The Mazda service employees also share a common break room at the Mazda facility.

The immediate supervisor of the service technicians in each facility also supervises that facility's service advisors, and Paragua, the Service Manager at the Mazda facility, also directly supervises the parts technicians. Moreover, Paragua and Gouvaia, the Porsche/Audi Parts Manager, are both supervised by Leddy, who also directly supervises the service technicians and service advisors for Porsche/Audi.

An examination of the other community of interest factors shows that, despite the above factors, the service technicians share a significantly stronger community of interest with each other than they do with any of the other employees in the service department. As explained above, the service technicians share unique advanced skills and training, perform highly skilled work that the other employees cannot perform, and are required to supply their own tools, which cost thousands of dollars. The Employer uses significantly different methods of calculating pay

for the different service department job classifications. The service technicians are paid based on a typical flat-rate system. They are paid based on the number of hours a repair is allocated in the Employer's flat-rate book, not based on the number of hours they actually work. Thus, their wages are calculated by multiplying their hourly pay rate times the number of hours they are credited for each repair they perform. Therefore, if the time it takes a service technician to complete a repair is less than the number of hours allocated in the flat-rate book, the service technician still is paid for the number of hours set in the flat-rate book. Conversely, if the time it takes to complete a repair is greater than the time allocated in the flat-rate book, the service technician is still only paid for the lesser number of hours set in the flat-rate book. For example, if a service technician takes 8 hours to complete 4 repairs and the flat-rate book allocated 3 hours for each of those repairs, the service technician would receive 12 hours of pay for the 8 hours he worked. If it took the service technician 8 hours to complete a repair for which the flat-rate book allocated only 7 hours, the employee would only be paid for working 7 hours. Therefore, in essence, each service technician's regular pay is based in large part on his ability to correctly complete each repair quickly. Service technicians are also paid overtime, and they punch a time clock in order to record their actual hours of work versus their flat-rate hours.

The parts technicians are paid a straight hourly rate and earn overtime, but they also receive incentive pay based on the number of service hours sold in the shop. The service advisors are considered salaried employees, but they also receive an incentive based on the number of service hours sold in the shop, and another incentive for achieving the manufacturer's customer satisfaction index (CSI).¹⁰ Thus, both the parts technicians' and service advisors' pay is affected by the total number of service hours sold by the shop. However, unlike the pay of the service

¹⁰ The CSI is a score set by each manufacturer. If the dealership achieves the score, the service advisors are paid the CSI incentive; if the dealership does not achieve it, the service advisors do not receive this pay.

technicians, the pay of the parts technicians and service advisors is not dependent on the speed with which they complete their assigned tasks.

The Employer argues that, despite the above-described differences in the remuneration systems, the fact that the parts technicians' and the service advisors' pay is dependent on the number of service hours sold in the shop causes the employees to have to rely on each other to work quickly and efficiently¹¹ and demonstrates a strong community of interest between these groups of employees. The Employer, however, has failed to note that only the individual service technician's pay is tied directly to his ability to correctly complete each repair in less time than the time period allocated in the flat-rate book. Therefore, irrespective of the overall service hours sold by the shop, the service technician who does not complete his repairs more quickly than the time allocated in the flat-rate book will receive significantly less pay than those service technicians who do complete the work more quickly than the time allocated in the flat-rate book. I therefore conclude that the service technicians' individual, time-oriented, flat-rate pay system, which includes overtime, is significantly different from the service shop sales-based salary system and CSI bonus system used for the service advisors or the hourly plus service shop sales incentive system used for the parts technicians.¹²

The employees in the three groups also do not work identical hours. The service technicians work from 8:00 a.m. to 4:30 p.m., while the parts technicians work from 8:00 a.m. to

¹¹ Because the service advisors' and parts technicians' pay depends in part on the service technicians' ability to work quickly and efficiently, they may be more motivated to quickly supply the service technicians with needed parts or some customer information. However, because of their limited skills and the nature of the Employer's operations, the parts technicians and the service advisors cannot help the service technicians complete their work more quickly and efficiently by actually assisting them with the repairs.

¹² I note that in Dodge City of Wauwatosa, as here, the service technicians were paid on a flat-rate system, and the service advisors and parts employees were each paid a base wage combined with an incentive pay that was based on the service shop's monthly gross profit. Dodge City of Wauwatosa, 282 NLRB 459, 459 (1986). The Employer contended that the only appropriate unit was a unit of all service department employees, but the Board upheld the Petitioner's request for a separate craft unit of service technicians and did not even refer to the incentive pay system as being a factor weighing in favor of a combined unit. Id.

5:00 p.m. Both the service technicians and the parts technicians are required to punch a time clock. The service advisors work significantly longer hours, from 7:30 a.m. to 5:30 p.m. They are not required to punch a time clock, but they manually record their hours of work.

I find that the service technicians share a strong separate community of interest based on the performance of automotive maintenance and repair work, which no other employees perform. The maintenance and repair work requires separate training, skills and certification, as well as at least \$2,000 worth of specialized tools which the service technicians must supply for themselves. The service technicians work in contiguous work stalls at their respective facilities. Moreover, they are the only employees who share the same hours of work and who are paid based on the same flat-rate pay system. In these circumstances, I conclude that the community of interest evidence supports the finding that the service technician unit is a separate, homogenous group warranting the designation of a craft unit.

THE APPROPRIATE BARGAINING UNIT MUST INCLUDE SERVICE TECHNICIANS AT BOTH THE PORSCHE/AUDI AND MAZDA FACILITIES

The Petitioner seeks to represent a unit of service technicians at the Porsche/Audi facility only, excluding the service technicians at the Mazda facility. A single-facility bargaining unit “is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” Jerry’s Chevrolet, Cadillac, Inc., 344 NLRB No. 87 (2005), citing J&L Plate, 310 NLRB 429 (1993). To determine whether the single-facility presumption has been rebutted, the Board examines factors such as: “(1) centralized control over daily operations and labor relations; (2) similarity of employee skills, functions and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any.” Id. Based on the evidence discussed below, I find that the appropriate bargaining unit in this case must include both the Porsche/Audi

and the Mazda service technicians, due to the geographic proximity and centralized administrative control of the two facilities, as well as the similar work and skills of the service technicians at both facilities.

Centralized Control over Daily Operations and Labor Relations

The Employer maintains centralized control over the daily operations of the two facilities. The evidence shows that the Employer uses the same methods of pay, employment benefits, personnel policies, and employee handbook at both facilities. Mike Walsh is the General Manager of both dealerships. Service and Parts Director Leddy, who reports to Walsh, is responsible for the service and parts departments at both facilities, and he supervises all service and parts personnel at both locations. Leddy directly supervises the Porsche/Audi service technicians, service advisors and the Parts Manager, Gouvaia, who in turn supervises the Porsche/Audi parts technicians. Leddy also directly supervises the Mazda Service Manager, Paragua, who in turn supervises the Mazda service technicians, service advisor and parts technician, as well as the detailers and utility/lot persons who work at both facilities.

Gouvaia and Paragua have direct responsibility for the employees under them. Although Paragua has the authority to hire and fire employees and sets the work schedules and vacations of the Mazda service department employees, Leddy has the ultimate responsibility for all service and parts personnel at both facilities. He spends about 15% of his work time at the Mazda facility and sets the wages for employees at both facilities.

In addition to centralized management, the evidence shows that the Employer has centralized accounting for the Porsche/Audi and Mazda facilities. The Employer's accounting practice is to report the combined profitability of both facilities, although it also has the capability to produce separate profitability reports for each facility. Leddy testified that he

receives monthly reports showing the overall profitability of the service and parts departments at both facilities combined, as well as monthly reports showing the separate profitability of each facility. The evidence that the Employer is able to produce both combined and separate profitability reports on a monthly basis supports the Employer's position that its accounting is centrally-controlled, and not separately controlled at each facility.

Similarity of Employee Skills, Functions and Working Conditions

The employees working in the same job classifications at each facility possess similar skills, perform similar functions and have similar working conditions. The only differences between the facilities are the types of vehicles being serviced. Each auto manufacturer requires its own training and certification program.

The employees also have similar working conditions. Employees in each job classification are paid in a similar manner at both facilities. The service technicians at both facilities are paid based on a typical flat-rate system. The parts technicians at both facilities are paid a straight hourly rate and earn overtime, but they also receive incentive pay based on the number of service hours sold in the shop. The service advisors at both facilities are considered salaried employees, but their salary is also tied to the number of service hours (flat-rate hours) sold by the service shop. Employees at both facilities receive the same employment benefits and follow the same employee handbook.

Employees in each job classification also have the same hours of work at each facility. The service technicians at both facilities work from 8:00 a.m. to 4:30 p.m. The parts technicians at both facilities work from 8:00 a.m. to 5:00 p.m., and the service advisors at both facilities work from 7:30 a.m. to 5:30 p.m.

In Jerry's Chevrolet, supra, where the Board found that a single-facility bargaining unit was not appropriate, the employees at all four dealerships had the same employee handbook, personnel policies, benefits, methods of pay, and work shifts. Here, the Employer's employees also have the same employee handbook, personnel policies, benefits, methods of pay, and hours or work, regardless of whether they work at the Porsche/Audi or Mazda facility. Thus, the similarity of employee skills, job functions and working conditions supports a finding that the appropriate bargaining unit must include both facilities.

Employee Interchange

There is no interchange of service technicians, service advisors or parts technicians between the Porsche/Audi and Mazda facilities because each auto manufacturer requires its own training and certification program for these job classifications. However, for the same reason, there is also no interchange between Porsche and Audi employees located at the same facility.¹³ Although the evidence shows no employee interchange among the service technicians, service advisors or parts technicians at the two facilities, the Employer employs four detailers and four utility/lot persons who work at both facilities.¹⁴ This is similar to the employee interchange in Jerry's Chevrolet, supra, where two lot attendants were responsible for the vehicles at all four dealerships.

In the instant case, the Employer's Porsche/Audi and Mazda facilities also share some equipment. This factor was addressed by the Board in Jerry's Chevrolet as well. In that case, the four facilities shared one on-site collision center for body repair work, one on-site machine for conducting the emissions test required for state inspections, and one on-site car wash. The

¹³ The evidence shows that one trainee at the Porsche/Audi facility is currently being trained to do both Porsche and Audi repair work, but there is no evidence that any other employee is cross-trained to work on more than one vehicle make.

¹⁴ Other than the detailers and utility/lot persons, there is no evidence that any service employee has been permanently or temporarily transferred from the Mazda facility to the Porsche/Audi facility, or vice versa.

emissions test machine was located at Buick/GMC dealership, so all cars needing a state inspection passed through the Buick/GMC facility, regardless of the vehicle make. Similarly, the car wash was located at the Nissan dealership, so all cars to be sold at any of the dealerships were first taken to the Nissan dealership to be washed, and then taken to the proper dealership.

Like the employer in Jerry's Chevrolet, supra, the Employer here owns one smog test machine for conducting emissions tests. The smog test machine is located in the Mazda service shop, so all vehicles needing a state inspection are taken to the Mazda facility, even if the customers originally bring them to the Porsche/Audi facility. The Employer's detailers and utility/lot persons are responsible for washing, detailing, and re-positioning the vehicles for both facilities. In sum, although there is no evidence that the Employer here performs body repair work at either of its facilities, the evidence shows that the two facilities share common state inspection equipment and common car washers, detailers and utility/lot persons.

Distance

In Jerry's Chevrolet, supra, the Board found that geography was "a salient factor favoring the multifacility unit." As in that case, the physical proximity of the Employer's dealerships here is the strongest factor rebutting the single-facility presumption. Here, the Porsche/Audi and Mazda facilities are located on adjoining city lots separated only by a parking lot, which is also owned by the Employer. Although the separate facilities have separate showrooms and separate service shops, at their closest point, the service buildings are only about 100 yards apart. The showrooms are only about 30 feet apart. Thus, the two facilities at issue here are located even closer together than the four facilities at issue in Jerry's Chevrolet, supra, which were located within 1000 feet of each other.

Bargaining History

The evidence shows that the Employer began negotiating for a successor collective bargaining agreement with the East Bay Automotive Council (EBAC) beginning in May 2004, when the Employer purchased the Porsche/Audi of Oakland and Mazda of Oakland dealerships from their prior owners. EBAC included the Petitioner, the Painters Union Local 1176 and the Teamsters Union Local 78. The record contains four contract proposals that were exchanged between the Employer and EBAC, including the Employer's proposals dated August 25, 2004 and May 5, 2005 and the EBAC proposals dated February 11, 2005 and July 29, 2005. The EBAC proposals were presented by the Petitioner.¹⁵ Although no collective bargaining agreement was ever reached, either between the Employer and EBAC, or between the Employer and the Petitioner separately, the record indicates that EBAC and the Petitioner were negotiating on behalf of employees at both the Porsche/Audi and Mazda facilities. The Employer's contract proposals applied to employees at both the Porsche/Audi and Mazda facilities, and the Petitioner presented no evidence to refute that it was bargaining on behalf of employees at both facilities. Although the bargaining history was short and no collective bargaining agreement was reached, the evidence that the Petitioner formerly bargained for a combined unit of Porsche/Audi and Mazda employees provides some additional support for my finding that a single facility unit is not appropriate in this case.

I find the above evidence sufficient to rebut the presumption that a single-facility bargaining unit is appropriate. The evidence shows that the Porsche/Audi and Mazda facilities are centrally controlled by the Employer, and the Employer measures their profitability as a

¹⁵ The record indicates that the Petitioner took the lead in negotiations. The Petitioner's agents, Mike Cook and Pat Woodward, and a service technician, Ryan Slade, were the chief negotiators. A Teamsters agent participated in about three of the bargaining sessions, but the Painters union was not directly involved because the Employer did not employ painters at that time.

combined operation. The service and parts departments at both facilities are managed by Mike Leddy, who supervises all service and parts personnel at both facilities. Employees at both facilities have similar methods of pay and hours of work, depending on their job classification, and all employees have the same benefits, personnel policies and employee handbooks. The Employer's detailers and utility/lot persons wash, detail and re-position the cars at both facilities. In addition to the detailers and utility/lot persons, the two facilities also share a smog test machine, where all vehicles are taken for state inspections regardless of the make. Most significantly, the two facilities are located on adjacent city lots and are only about 100 yards apart at their closest point. Moreover, although the bargaining history was brief, the evidence shows that the Petitioner previously treated employees at the two facilities as a combined bargaining unit. Thus, I find that the appropriate bargaining unit must include the service technicians at both the Porsche/Audi and the Mazda facilities.

As in many cases, some of the above described factors support the Union's position on the single facility presumption issue and some support the Employer's position. The Union's arguments focus on separate supervision and a lack of interchange. I note that although the service technicians at each facility have a different immediate supervisor, this is not the typical situation where each group has its own immediate supervisor and where the only common supervision is by a manager who merely supervises the two immediate supervisors. Rather, Service and Parts Director Leddy spends 15% of his time at the Mazda dealership, and he directly supervises both the immediate supervisor of the Mazda service technicians and the service technicians at the Porsche/Audi facility.

With regard to interchange, the Union is correct that the Mazda technicians are not trained to perform work on Porsches or Audis, and they are not assigned to work at the

Porsche/Audi facility. Similarly, the Porsche and Audi service technicians are not trained to perform work on Mazdas and are not assigned to work at the Mazda facility. Because of the vehicle specific training, the record shows that the Audi service technicians do not perform work on Porsches and visa versa, even though they work in the same facility.

While this still may be a relatively close issue, the above discussion demonstrates that the significance of the factors relied on by the Union is somewhat negated by the unique circumstances in this case. The factors undermining the single facility presumption are compelling. Indeed, the facts in this case are very similar to those in Jerry's Chevrolet, other than the fact that the immediate supervisor of the Mazda service technicians has somewhat more authority than the immediate supervisors in Jerry's Chevrolet. In these circumstances, I conclude that the Employer has rebutted the single facility presumption. I rely heavily on the fact that the service technicians at the two facilities perform the same type of automotive repair work in buildings that are separated only by a large parking lot. In addition, the service technicians have similar skills and work under similar conditions. I also note that the Employer maintains a strong centralized control over daily operations and labor relations, and therefore that both groups of service technicians are paid under a flat-rate system, receive the same benefits and are covered by the same personnel policies and handbook. The Employer also uses one smog check machine for both facilities, the detailers and utility employees perform work for both facilities, and it appears that the parties had previously been bargaining on a combined facility basis.

CONCLUSIONS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,

including the parties' arguments made at the hearing and the brief filed by the Employer, and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a California corporation with an office and facilities located in Oakland, California, where it is engaged in the retail sale of automobiles and automotive services. During the past 12 months, the Employer in conducting its business operations has had gross revenues in excess of \$500,000 and has purchased and received, at its Oakland, California facilities, goods or services valued in excess of \$5,000 that originated outside the State of California. Based on these facts, the parties also stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act. In these circumstances, I find the assertion of jurisdiction in this case to be appropriate.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians and apprentices employed by the Employer at its Porsche/Audi facility located at 2345 Broadway in Oakland, California and at its Mazda facility located at 2315 Broadway in Oakland, California, excluding all other employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Machinists Local Lodge 1546, District Lodge 190. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). The undersigned shall make the list available to the Petitioner when the undersigned shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **March 10, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the

election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 17, 2006**. The request may **not** be filed by facsimile. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance electronic filing can also be

found under “E-Gov” on the National Labor Relations Board web site: www.nlrb.gov.

Dated: March 3, 2006

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

32-1315

440-1760-9133-3400
440-1760-9133-4300
440-1760-9133-5300
440-1760-9167-0233
440-3300-0000-0000
440-3325-0000-0000